

Filed at 4 O'clock & 50 P.M.  
Date: 9-13-90  
IN THE UNITED STATES BANKRUPTCY COURT

FOR THE  
SOUTHERN DISTRICT OF GEORGIA  
Augusta Division

IN RE:	)	Chapter 11 Case
	)	Number <u>90-10048</u>
JAMES C. BIBLE, JR.	)	
	)	
Debtor-in-Possession	)	
<hr/>		
FIRST UNION NATIONAL BANK OF	)	
GEORGIA	)	
Movant	)	
	)	
vs.	)	
	)	
JAMES C. BIBLE, JR.	)	
	)	
	)	
Respondent	)	

**ORDER**

First Union National Bank of Georgia ("First Union") by motion seeks relief from the automatic stay of 11 U.S.C. §362 in order to proceed with the confirmation of a foreclosure sale pursuant to Official Code of Georgia Annotated (O.C.G.A.) §44-14161.<sup>1</sup> The facts are not disputed

---

<sup>1</sup>O.C.G.A. §44-14-161 provides:

(a) When real estate is sold on foreclosure, without legal process, and under powers contained in security deeds, mortgages, or other lien contracts and at the sale the real estate does not bring the amount of the debt secured by the deed, mortgage, or contract, no action may be taken to obtain a deficiency judgment unless the person instituting the foreclosure proceeding shall, within 30 days after

On January 10, 1990 the debtor-in-possession, James C. Bible, Jr. ("debtor") filed a petition for relief under Chapter 11 of Title 11 United States Code. Prior to such filing, property owned jointly by the debtor and a non-debtor third party, James E. Davis, Jr. ("Davis") was foreclosed upon by First Union. Such foreclosure was pursuant to a power of sale contained in a security deed executed by the debtor and Davis to First Union.

Subsequent to the foreclosure but prior to January 10, 1990, First Union brought an action in the Superior Court of Richmond County, Georgia to confirm the sale. The confirmation application was filed in order to comply with O.C.G.A. §44-14-161. First Union contends that if such sale is confirmed, a deficiency will exist. After the application to confirm the foreclosure sale was filed with the Superior Court but prior to a hearing on the application, the debtor filed his Chapter 11 case.

The bankruptcy court is the appropriate forum for determining of confirmation of a non-judicial foreclosure of real property involving the debtor. Trust Company Bank of Augusta,

---

the sale, report the sale to the judge  
of the superior

court of the county in which the land is  
located - for confirmation and  
approval and shall obtain an order of  
confirmation and approval thereon.

(b) The court shall require evidence to show the true market value of the property sold under the powers and shall not confirm the sale unless it is satisfied that the property so sold brought its true market value on such foreclosure sale.

(c) The court shall direct that a notice of the hearing shall be given to the debtor at least 5 days prior thereto; and at the hearing the court shall also pass upon the legality of the notice, and advertisement, and regularity of the sale. The court may order a resale of the property for good cause shown.

N.A. v. Joe Emory Collins and Sylvia Ford Drayton, (In re: Collins) Chapter 13 Case No. 89-11421 (Bankr. S.D. Ga. Feb. 13, 1990); citing Federal Deposit Insurance Corp. v. Windland Company, 245 Ga. 194, 264 S.E.2d 11 (1980); Weems v. McCloud, 619 F.2d 1081 (5th Cir. 1980); Bank of America National Trust and Savings Assoc. v. Virginia Hill Partners I (In re: Virginia Hill Partners I) 110 B.R. 84, 86 (N.D. Ga., 1989). Under the Bankruptcy Code a creditor may file a proof of claim. 11 U.S.C. §501. A claim is defined as a "right of payment." 11 U.S.C. §101(4)(A). Under O.C.G.A. §44-14-161 a creditor has no right to payment on a deficiency following a nonjudicial foreclosure unless the foreclosure is judicially confirmed.

Although the confirmation of a non-judicial foreclosure is a state law cause of action, it is a prerequisite for the establishment by the creditor of an allowed unsecured claim for a deficiency in a bankruptcy proceeding. Allowance of claims are core proceedings arising in a case under title 11. 28 U.S.C. §157(b)(2)(B), 28 U.S.C. §1334(b), 11 U.S.C. §502(b). A determination that First Union has complied with the requirements of O.C.G.A. §44-14-161 is necessary to establish whether movant's unsecured claim is to be allowed. 11 U.S.C. §502(b)(1). See generally Trust Company Bank of Augusta, N.A. v. Joe Emory Collins, et al. supra.

The unresolved issue is whether this court could enter a binding order upon the non-debtor co-obligor, Davis. Determination as to whether this court has jurisdiction to enter a

final order binding upon Davis rests upon a determination of whether the nonjudicial foreclosure confirmation proceeding now pending in the Superior Court either (1) arises under title 11; or (2) arises in a case under title 11; or (3) is related to a case under title 11. See, 28 U.S.C. §1334(b)<sup>2</sup>.

The non-judicial foreclosure action as it pertains to Davis must be construed as arising in a case under title 11. Confirmation of the foreclosure proceeding is a prerequisite to the allowance of a proof of claim by First Union in this proceeding and also a prerequisite for First Union's pursuing payment of any deficiency against Davis. The establishment of the deficiency and right to pursue collection of the deficiency are necessary before rights of contribution between the debtor and Davis can be established. O.C.G.A. §23-2-71<sup>3</sup>. The establishment of a deficiency

---

<sup>2</sup>Section 1334(b) provides:

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or court other than the district court, the district court shall have original but not exclusive jurisdiction in all civil proceedings arising under title 11, or arising in or related to cases under title 11.

<sup>3</sup>O.C.G.A. §23-2-71 provides

In cases of joint, joint and several, or several liabilities of two or more persons, where all are equally bound to bear the common burden and one has paid more than his share, he shall be entitled to contribution from the other; and whenever the circumstances are such that an

action at law will not give a complete remedy, equity may entertain jurisdiction.

by First Union determines whether a right of contribution exists between the debtor and Davis which would give rise to a claim by Davis in the bankruptcy case.

The meaning of "arising in" proceedings encompass administrative matters, counterclaims by the estate against persons filing claims against the estate, orders to turnover property of the estate, and determinations of the validity, extent or priority of liens. 1 Collier on Bankruptcy ¶3.01(c)(iv) (L. King 15th ed. 1989).

The term 'administrative, matters . . . may constitute the principle constituent of 'arising in' jurisdiction. This category is illustrated by such things as allowance and disallowance of claims, orders in respect to obtaining credit, determining the dischargeability of debt, discharges, confirmation of plans, orders permitting the assumption or rejection of contracts, and like matters. (emphasis added)

1 Collier on Bankruptcy ¶3.01(c)(v) (L. King 15th ed. 1989). This "administrative matters" determination as it pertains to the allowance and disallowance of claims constitutes the basis for the "arising in" jurisdiction of the bankruptcy court. The foreclosure confirmation proceeding is a necessary and integral part of any claim allowance procedure in this bankruptcy proceeding involving First Union and Davis.

The pending application to confirm non-judicial foreclosure is necessary for any claim allowance determination by

this court and is therefore a civil proceeding arising in a case under title 11. Pursuant to 28 U.S.C. §1334(b), the district court has original, but not exclusive jurisdiction, over the parties and the subject matter of the proceeding necessary to enter a final binding order. Having determined that the district court has jurisdiction, pursuant to the general referral to the bankruptcy court of all core proceedings arising in a case under title 11, this court may enter a final binding order. 28 U.S.C. §157(a); (b) (1), (2) (B)<sup>4</sup>. Should First Union desire to proceed with the pending confirmation of foreclosure proceeding, it must remove the action from the Superior Court to the district court and request referral to the bankruptcy court for final adjudication. 28 U.S.C.

§1452(a)<sup>5</sup>. The motion for relief from automatic stay is ORDERED

---

<sup>4</sup>28 U.S.C. §157 provides in pertinent part:

(a) Each district court may provide that any or all cases under title 11 and any and all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

(b) (1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred to under subsection (a) of this section, and may enter appropriate orders and judgment . . .

(2) Core proceedings include, but are not limited to

(B) allowance or disallowance of  
claims against the estate . . .  
(emphasis added)

<sup>5</sup>28 U.S.C. §1452(a) provides:

(a) A party may remove any claim or  
cause of action in a civil action other

denied.

JOHN S. DALIS  
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 13th day of September, 1990.

---

than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental units police or regulatory power, to the district court for the district where such civil action is pending, if such district court had jurisdiction of such claim or cause of action under §1334 of this title [28].